

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ELIOT I. BERNSTEIN, INDIVIDUALLY,

Et al., :

Plaintiff, :

-against- :

**AFFIDAVIT**

**Docket No. 07 CV 11196**

APPELLATE DIVISION, FIRST

DEPARTMENT, et al., :

Defendants. :

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STATE OF NEW YORK}

S.S.

COUNTY OF NASSAU}

Richard M. Howard, being duly sworn, does hereby depose and say:

1. I am a member of the firm of Meltzer, Lippe, Goldstein & Breitstone, LLP, Defendant herein and counsel to Defendant Lewis S. Meltzer. I make this affidavit in support of said Defendants' cross motion to dismiss the Subject Complaint.
2. These Defendants join in the motions to dismiss brought on behalf of Co-Defendants Raymond A. Joao, Proskauer Rose LLP, etc.
3. As the same grounds appear applicable to all motions, these Defendants will not burden the Court with redundant moving papers. Suffice it to say that the Subject Complaint sets forth four claims for relief, each of which is either time barred or fails to state a claim for which relief may be granted as a matter of law.

4. Plaintiffs' claims pursuant to the United States Constitution are meritless against these Defendants, as they are in no way affiliated with any governmental body.
5. Plaintiffs' anti-trust claims are both unintelligible and insufficiently pled.
6. Plaintiffs' RICO claims are barred as failing to denominate a RICO "enterprise" failing to assert "continuity" or a sufficient predicate pattern of activity.
7. Should the Court be considering the remaining claims of the Amended Complaint, Plaintiffs lack diversity of jurisdiction and any pendant claims should be dismissed now, during this pre-discovery period.

Wherefore, it is respectfully requested that all Defendants' motions to dismiss the Subject Complaint or Amended Complaint be granted in their entirety and that the Defendants be awarded such other and further relief as this Court deems just and proper.

  
Richard M. Howard

Sworn to before me this  
30<sup>th</sup> day of May, 2008

  
Notary Public

CAROLYN A. BEST  
Notary Public, State of New York  
No. 01BE6095873  
Qualified in Nassau County  
Commission Expires July 21, 20 11